

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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US FLOUR CORPORATION,

Plaintiff(s),

-against-

CERTIFIED BAKERY, INC.,

Defendant(s).

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WILLIAM D. WALL, United States Magistrate Judge:

**REPORT AND
RECOMMENDATION**
CV 10-2522 (JS) (WDW)

Before the court on referral from District Judge Seybert is the plaintiff's motion for entry of a default judgment. DE[12 & 14]. I recommend that the motion be denied, and that a finding be made that the defendant was never served.

DISCUSSION

After the motion for entry of default was made, an attorney submitted a letter on behalf of the defendant, without entering a formal appearance, stating that the defendant had never been served with the complaint. DE[13]. I scheduled a Traverse Hearing for April 27, 2011, specifically telling the plaintiff that it must, at the hearing, "establish proper service," and that "[a]ppropriate witnesses and exhibits must be introduced." Elec. Order of 3/22/11. To the Traverse Hearing, the plaintiff sent an attorney who is not an attorney of record, and introduced not a single witness or exhibit to establish proper service, thus wasting the court's time and completely failing to meet its burden of proving service. The motion for default judgment should be denied, good service not having been established.

OBJECTIONS

A copy of this Report and Recommendation is being sent to counsel for the plaintiff by electronic filing on the date below. Plaintiff's counsel is directed to serve a copy of this Report on the defendant by certified mail, return receipt requested, and to fax a copy of it if possible, and

to electronically file proof of service with the court. Any objections to this Report and Recommendation must be filed with the Clerk of the Court within 14 days. *See* 28 U.S.C. §636 (b)(1); Fed. R. Civ. P. 72; Fed. R. Civ. P. 6(a) and 6(d). Failure to file objections within this period waives the right to appeal the District Court's Order. *See Ferrer v. Woliver*, 2008 WL 4951035, at *2 (2d Cir. Nov. 20, 2008); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
April 27, 2011

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge